

Serial No. 09/720,252

Applicant: Regine Heilbronn

**In the Claims**

Please cancel claims 60, 61 and 77-79 without prejudice and without disclaimer.

Applicant reserves the right to refile the claims in a continuing divisional, continuing and/or continuation-in-part without relinquishing any rights or benefits arising from the present application.

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**LISTING OF THE CLAIMS**

1-62. (canceled)

63. (currently amended) The ~~rHV of claim 61~~ process of claim 70 wherein the expression cassette optionally lacks all or part of AAV inverted repeat sequences (ITRs).

64. (currently amended) The ~~rHV of claim 61~~ process of claim 70 wherein the non-essential region of the ~~rHV~~ HV genome is U<sub>S</sub> or U<sub>L</sub>.

65. (currently amended) The ~~rHV of claim 61~~ process of claim 70 wherein the ~~rHV~~ herpes virus lacks ~~non-essential~~ gene UL9.

66. (currently amended) The ~~rHV of claim 61~~ further comprising process of claim 70 wherein the expression cassette further comprises a reporter gene in the expression vector.

67. (currently amended) The ~~rHV of claim 61~~ which process of claim 70 wherein the HV is selected from the group of Herpesviridae consisting of herpes simplex virus (HSV), cytomegalovirus (CMV), pseudorabies virus (PRV), Epstein-Barr virus (EBV) and other herpesvirus family members.

68. (currently amended) The ~~rHV of claim 61~~ process of claim 70 wherein the HV is identified as a herpes simplex virus (HSV).

69. (currently amended) The ~~rHSV-rHV of claim 61~~ which is a The process of claim 70 wherein the HV is the recombinant HSV-1 derivative of HSV-1 strain 1802 having ECACC accession number V97111302.

70. (currently amended) A process for preparing the a recombinant herpes virus (rHV) of claim 61 comprising the steps:

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preparing ~~a vector~~ an expression cassette that includes an adeno-associated virus (AAV) *rep* and an AAV *cap* gene each operably linked to a promoter;  
integrating said ~~vector~~ cassette into a non-essential region of the genome of a herpes virus (HV) to obtain rHV; and  
replicating the rHV in a host cell without reversion to the corresponding HV sequence lacking AAV *rep* and *cap* gene sequences under replication conditions as determined subsequent to at least 3, 5, or 7 dilution steps by a plaque assay.

71. (previously presented) The process of claim 70, wherein the *rep* and *cap* genes are integrated into the HV genome by restriction cleavage/ligation or by homologous recombination.
72. (canceled)
73. (currently amended) The process of claim 70 wherein the rHV further comprises a selected heterologous gene of interest operably linked to a promoter comprised within the expression cassette ~~vector~~.
74. (previously presented) The process of claim 73 wherein the heterologous gene of interest encodes a therapeutically active polypeptide.
75. (previously presented) The process of claim 70 wherein the host cell is a mammalian cell.
76. (previously presented) The process of claim 75 wherein the mammalian cell is selected from the group consisting of HeLa, BHK21 and Vero cells.
- 77-79. (canceled)
80. (currently amended) ~~The rHsv of claim 61 which is identified as having A~~ recombinant herpes virus having ECACC accession number V97111302.

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81. (currently amended) ~~The Rhsv of claim 80 which is~~ A recombinant herpes simplex virus prepared from HSV-1 strain 1802 by insertion of an expression cassette ~~consisting of~~ comprising AAV *rep* and *cap* genes each operatively linked to a promoter into an *Xba*I unique restriction site of said strain 1802.